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10/728,961

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December 8, 2003

First Named Inventor

HUFFMAN, Larry

Art Unit

3764

Examiner Name

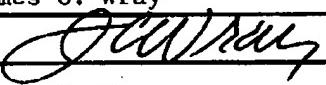
Richman, Glenn E.

Attorney Docket Number

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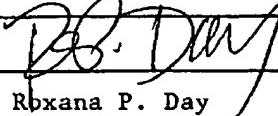
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Larry HUFFMAN

Art Unit: 3764

Serial No. 10/728,961

Examiner: Richman, Glenn E.

Filed: December 8, 2003

For: ABDOMINAL AND BODY EXERCISE DEVICE

APPEAL BRIEF

The Appeal Brief fee of \$270 is attached.

The Notice of Appeal was filed September 15, 2008.

11/17/2008 VBUI11 00000019 10728961

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REAL PARTY IN INTEREST

The real party in interest is the Applicant, Larry Huffman.

RELATED APPEALS AND INTERFERENCES

No other related appeal or interference is pending.

STATUS OF CLAIMS

Claims 1-20 stand rejected.

Claims 1-20 are appealed.

No claim has been withdrawn or is allowed.

A copy of the appealed claims is appended in the Claims Appendix.

STATUS OF AMENDMENTS

No amendment was proposed after the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention is an exercise apparatus as claimed in independent claims 1 and 10 (and dependent claims 2-9) and a method of exercising with the apparatus of claim 10 as claimed in method claim 11 (and dependent method claims 12-20).

The invention set forth in independent claim 1 comprises a double acting sealed cylinder 7, a piston rod 11, and first and second spaced parallel bars 3, 5 connected to opposite ends 15, 13 of the piston rod 11 and cylinder 7. Grip 9 provides gripping of a bar with one or two hands or with body members. Resistance resists movement of the piston rod toward the first end 13 or second end 15. (Figures 1-4, page 8 line 15- page 9 line 2) The invention is shown in Figures 1-4 and described in pages 8-10 and the upper half of page 13 of the specification.

Resistance is on both sides of the piston as the piston is moved through cylinder 7, claim 2 (Figures 1-4, page 9 lines 1, 2). Resistance is adjustable (17), claim 3 (Figures 2-5, page 9 lines 12-16). Resistance is variable (17), claims 4, 5 (Figures 2-5, page 9 lines 16-20).

The invention set forth in independent claim 15 includes a double acting cylinder 7, a ram 11, a first mounting ring 13 on the cylinder 7 and a second mounting ring 15 on the ram 11. First and second handles 5, 3 have opposite equal length ends. Foam padded grips 9 are mounted on ends of the first and second handles. The invention is shown in Figures 1-4 and described in pages 8-10 and the upper half of page 13 of the specification.

The invention set forth in the method claim 12-20 points out steps of using the apparatus of claim 10 as shown in Figures 5A-11B and described in specification pages 10-12 and the lower half of page 13.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-9 and 11-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Resk in view of Huang.

Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by Huang in view of Resk.

The issues to be reviewed are:

whether claims 1-9 and 11-20 are patentable under 102(b) over Resk and Huang,

whether claim 10 is patentable under 102(b) over Huang and Resk.

ARGUMENTS

The 102(b) rejections are not tenable.

The rejections under 102b as anticipated by A in view of B are patently incorrect.

The final office action stated:

Claims 1-9 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Resk in view of Huang .

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Huang in view of Resk.

A combination of references in view of one another cannot be used in a §102(b) rejection.

Claims 1-9 and 11-20 are patentable under 102(b) over Resk and Huang.

Huang describes "...a double acting hydraulic cylinder used in an exercising apparatus..." and states "Double-acting hydraulic cylinders are now used widely in exercising apparatuses..." and "The rear ring is fixedly connected to exercising apparatus (not shown)." See Col. 2, lines 9-11, lines 16-17, Col. 3, lines 39-40.

Huang is not an exercising device in itself. Huang is therefore part of an exercising apparatus such as commonly found in large public gyms.

Resk describes a hand held device in which "The handles can be pushed together against this static pressure..." Abstract, lines 10-11.

Neither Huang nor Resk has or suggests, for example, the element of:
claim 1 – gripping handles directly forcing a ram into and out of a hydraulic cylinder or
the previous allowed claim 10 – a first handle extending through a first ring, a second handle extending through a second ring.

Nothing inherent in the prior art or in the two references would have suggested their combination. Even if combined, the references would not have rendered obvious the subject matter of the invention as specifically set forth in claims 1-20.

Resk has an air cylinder 30 in which pressure is increased by a bicycle pump 20 in Figure 1. Restraint strap 70 holds the cylinder compressed when it is stored. When exercising, a person holds the handles in two hands and tries to push the handles together. (Col 2, lines 18-20)

Huang states:

"The hydraulic cylinder is mounted on an exercising apparatus (not shown) to provide a resistance to the user of the exercising apparatus." (Col 2, lines 26-28)

"The rear ring is also fixedly connected to the exercising apparatus..." (Col 2, lines 39-40)

Neither the references nor a combination of the references suggests or would have suggested or made obvious the structure set forth in claim 1:

gripping handles, relatively moving handles away from and toward each other and directly forcing a ram directly connected to one of the handles into and out of a hydraulic or pneumatic cylinder directly connected to the other one of the handles, and moving hydraulic or pneumatic fluid from one end to the other end of the cylinder with the relative movement of the handles and of the ram and the cylinder;
a grip provided on one of the bars for gripping the one bar with one or two hands of a user; and
positions provided on another one of the bars for holding the other bar with one or both hands or with body members.

Claim 1 is patentable over Resk and Huang.

Claim 1 requires a double acting cylinder and resistance resisting movement of the piston rod toward the first end and toward the second end and gripping handles forcing a ram into and out of the cylinder and moving fluid from one end to the other end.

Resk's pressure pushes the piston assembly always outward from the cylinder. Resk always pushes outward and never resists outward movement. At rest Resk is always elongated.

Huang's cylinder is always "...mounted on exercising apparatus..." (col. 2, l. 26-26). Huang never offers push-pull resistance of a complete exercising apparatus as described in claim 1.

Resk has no fluid in the cylinder on opposite sides of the piston, and wherein the resistance comprises resistance to flow of fluid between opposite sides of the piston as the piston is moved through the cylinder of claim 2.

Resk does not have the resistance is adjustable by varying flow rate of the fluid between the opposite sides of the piston of claim 3.

Resk does not have the resistance is variable in response to varying force between the bars for extending the piston rod from the cylinder and moving the piston rod into the cylinder of claim 4.

Resk does not have the resistance is variable in response to varying speed between the bars for extending the piston rod from the cylinder and moving the piston rod into the cylinder of claim 5.

Resk does not have a flow passage between sides of the piston and a restrictor on the passage for restricting flow of claim 8.

Resk does not have "the restrictor is adjustable" of claim 9.

With regard to claim 6, Applicant traverses the holding of obviousness based on hearsay of a secondary reference and as not citing a correct line in col. 1 of the secondary reference. If the examiner wishes to use the reference patent cited by the secondary reference, it is requested that the patent be cited.

Huang is a cylinder for us in an exercising apparatus which is not shown. Huang col. 2,

1.39.

Huang does not have a first handle extending through the first mounting ring and having opposite equal length ends of the first handle on opposite sides of the first ring; a second handle extending through the second ring and having opposite equal length ends of the second handle on opposite sides of the second ring; and foam padded handle grips, each respectively mounted on the ends of the first and second handles of claim 10.

Neither of the references anticipated the present invention as claimed.

Resk would not have rendered obvious the invention as claimed in claim 6.

Claim 10 is patentable over Huang and Resk.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 10:

a first handle extending through the first mounting ring and having opposite equal length ends of the first handle on opposite sides of the first ring;

a second handle extending through the second ring and having opposite equal length ends of the second handle on opposite sides of the second ring; and

foam padded handle grips, each respectively mounted on the ends of the first and second handles.

Resk has a one way cylinder. Huang is not an exercising device, but is part of a large exercise apparatus.

Claims 11-20 are patentable under 102(b) over Resk and Huang.

Resk does not have moving hydraulic or pneumatic fluid from one end to the other end of the cylinder with the relative movement of the handles and of the ram and the cylinder of claim 11.

Resk does not have a first bar placed through a first ring on a closed end of the cylinder, and gripping a second pair of handles on opposite ends of a second bar placed through a second ring on an outer end of the ram of claim 12.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 13:

the gripping of the first pair of handles comprises placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands of a user near a chin and holding the hands in relative position to the chin, moving the first pair of handles by alternately bending a user's trunk forward and raising the trunk against fluid resistance of movement in the cylinder by the ram, thereby exercising the user's abdominal muscles.

Resk does not have "placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands of a user near a chin and holding the hands in relative position to the chin, moving the first pair of handles by alternately bending a user's trunk forward and raising the trunk against fluid resistance of movement in the cylinder by the ram, thereby exercising the user's abdominal muscles" of claim 13.

Resk does not have "placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward, and holding a user's back straight and elbows stationary, raising and lowering the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's biceps" of claim 14.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 14:

the gripping of the first pair of handles comprises placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward, and holding a user's back straight and elbows stationary, raising and lowering the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's biceps.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 15:

placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing outward, and holding a user's back straight and elbows stationary, lowering and raising the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's triceps and/or shoulders.

Resk does not have "placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing outward, and holding a user's back straight and elbows stationary, lowering and raising the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's triceps" of claim 15.

Resk does not have "placing the first pair of handles under fees of a user in a standing position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward and knees slightly flexed, and raising and

lowering the second pair of handles by lifting and lowering the user's back against fluid resistance of movement in the cylinder by the ram, exercising back and abdominal muscles in an upright rowing exercise" of claim 16.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 16:

placing the first pair of handles under feet of a user in a standing position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward and knees slightly flexed, and deadlifting, raising and lowering the second pair of handles by lifting and lowering the user's back against fluid resistance of movement in the cylinder by the ram, exercising back and abdominal muscles in an upright rowing exercise.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 17:

placing the first pair of handles under feet of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands behind the user's knees and squatting and straightening the user's legs against fluid resistance of movement in the cylinder by the ram in a squat exercise.

Resk does not have "placing the first pair of handles under feet of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands behind the user's knees and squatting and straightening the user's legs against fluid resistance of movement in the cylinder by the ram in a squat exercise" of claim 17.

Resk does not have one hand near the first ring, gripping the second pair of handles with the other hand near the second ring, palms facing inward, and exercising chest and back muscles

by pushing the first and second pairs of handles toward each other and pulling the first and second pairs of handles away from each other against fluid resistance of movement in the cylinder by the ram in chest flies of claim 18.

Resk does not have "twisting a collar on the cylinder in staged resistance steps for adjusting resistance in the cylinder" of claim 19.

Resk does not have "adjusting resistance in the cylinder" of claim 20.

Neither the references nor a combination of the references suggests or would have suggested or made obvious the steps of claim 18:

pulling the first and second pairs of handles away from each other against fluid resistance of movement in the cylinder by the ram in chest flies.

The particular exercises shown in Figures 5a through 8b and 10a through 11b would not have been obvious from any combination of the references.

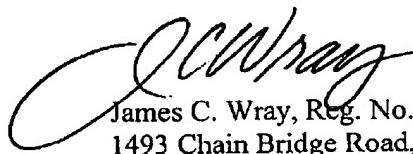
The particular structures of claims 1-4 wherein the handles are elongated and are as long as the cylinder would not have been obvious from any combination of the references.

All of the claims should be allowed.

CONCLUSION

Reversal of the examiner and allowance of all claims are requested.

Respectfully,



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November 14, 2008

CLAIMS APPENDIX

1. Exercise apparatus comprising:
 - first and second spaced parallel bars;
 - a double-acting sealed cylinder having first and second ends; the first end being closed and the second end having an opening with a seal for permitting sliding of a ram therethrough;
 - the first end of the cylinder connected centrally on the first bar;
 - a ram having a piston mounted in the cylinder and having a piston rod connected at a first end to the piston, the piston rod extending through the second end of the cylinder and having a second end connected centrally on the second bar;
 - resistance provided between the piston and the first and second ends of the cylinder for resisting movement of the piston and piston rod toward the first end and toward the second end with respect to the cylinder for moving the ram and increasing force in a fluid medium in one end of a cylinder and forcing fluid from the one end of the cylinder to the other end; a passage between the ends of the cylinder and a restriction in the passage for controlling flow of fluid between opposite ends of the cylinder;
 - gripping handles, relatively moving handles away from and toward each other and directly forcing a ram directly connected to one of the handles into and out of a hydraulic or pneumatic cylinder directly connected to the other one of the handles, and moving hydraulic or pneumatic fluid from one end to the other end of the cylinder with the relative movement of the handles and of the ram and the cylinder;
 - a grip provided on one of the bars for gripping the one bar with one or two hands of a user; and
 - positions provided on another one of the bars for holding the other bar with one or both hands or with body members.

APP A 1

2. The apparatus of claim 1, further comprising fluid in the cylinder on opposite sides of the piston, and wherein the resistance comprises resistance to flow of fluid between opposite sides of the piston as the piston is moved through the cylinder.
3. The apparatus of claim 2, wherein the resistance is adjustable by varying flow rate of the fluid between the opposite sides of the piston.
4. The apparatus of claim 1, wherein the resistance is variable in response to varying force between the bars for extending the piston rod from the cylinder and moving the piston rod into the cylinder.
5. The apparatus of claim 1, wherein the resistance is variable in response to varying speed between the bars for extending the piston rod from the cylinder and moving the piston rod into the cylinder.
6. The apparatus of claim 1, wherein the fluid is oil and the cylinder is a hydraulic cylinder.
7. The apparatus of claim 1, wherein the fluid is air and the cylinder is a pneumatic cylinder.
8. The apparatus of claim 1, further comprising a flow passage between sides of the piston and a restrictor on the passage for restricting flow.
9. The apparatus of claim 8, wherein the restrictor is adjustable.
10. Exercise apparatus comprising:
a double-acting sealed hydraulic or pneumatic cylinder having opposite first and second ends, the first end being closed and the second end having an opening with a seal for permitting sliding movement of a ram therethrough, and having fluid sealed in the cylinder;
a ram mounted in the cylinder, the ram having a piston on a first end disposed within the cylinder, and the ram having a second end extending from the cylinder for moving the ram and increasing force in a fluid medium in one end of a cylinder and forcing fluid from the one end of the cylinder to the other end;

APP A 2

a passage between the ends of the cylinder and a restriction in the passage for controlling flow of fluid between opposite ends of the cylinder;

a first mounting ring on the first end of the cylinder;

a second mounting ring on the second end of the ram;

a first handle extending through the first mounting ring and having opposite equal length ends of the first handle on opposite sides of the first ring;

a second handle extending through the second ring and having opposite equal length ends of the second handle on opposite sides of the second ring; and

foam padded handle grips, each respectively mounted on the ends of the first and second handles.

11. A method of exercising, comprising using the apparatus of claim 10 by gripping the handles, relatively moving the handles away from and toward each other and directly forcing a ram directly connected to the second handles into and out of a hydraulic or pneumatic cylinder directly connected to the first handles, and moving hydraulic or pneumatic fluid from one end to the other end of the cylinder with the relative movement of the handles and of the ram and the cylinder.

12. The method of claim 11, wherein the gripping of the first and second handles comprises gripping a first pair of handles on opposite ends of a first bar placed through a first ring on a closed end of the cylinder, and gripping a second pair of handles on opposite ends of a second bar placed through a second ring on an outer end of the ram.

13. The method of claim 12, wherein the gripping of the first pair of handles comprises placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands of a user near a chin and holding the hands in relative position to the chin, moving the first pair of handles by alternately bending a user's trunk forward and raising the trunk against fluid

resistance of movement in the cylinder by the ram, thereby exercising the user's abdominal muscles.

14. The method of claim 12, wherein the gripping of the first pair of handles comprises placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward, and holding a user's back straight and elbows stationary, raising and lowering the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's biceps.

15. The method of claim 12, wherein the gripping of the first pair of handles comprises placing the first pair of handles under knees of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing outward, and holding a user's back straight and elbows stationary, lowering and raising the first pair of handles against fluid resistance of movement in the cylinder by the ram, and exercising the user's triceps and/or shoulders.

16. The method of claim 12, wherein the gripping of the first pair of handles comprises placing the first pair of handles under feet of a user in a standing position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands, palms facing inward and knees slightly flexed, and deadlifting, raising and lowering the second pair of handles by lifting and lowering the user's back against fluid resistance of movement in the cylinder by the ram, exercising back and abdominal muscles in an upright rowing exercise.

17. The method of claim 12, wherein the gripping of the first pair of handles comprises placing the first pair of handles under feet of a user in a seated position, and wherein the gripping of the second pair of handles comprises gripping the second pair of handles with hands behind the user's knees and squatting and straightening the user's legs against fluid resistance of movement in the cylinder by the ram in a squat exercise.

18. The method of claim 12, further comprising gripping the first pair of handles with one hand near the first ring, gripping the second pair of handles with the other hand near the second ring, palms facing inward, and exercising chest and back muscles by pushing the first and second pairs of handles toward each other and pulling the first and second pairs of handles away from each other against fluid resistance of movement in the cylinder by the ram in chest flies.

19. The method of claim 12, further comprising twisting a collar on the cylinder in staged resistance steps for adjusting resistance in the cylinder.

20. The method of claim 12, further comprising adjusting resistance in the cylinder.

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EVIDENCE APPENDIX

No additional evidence outside of the record.

APP C 1

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

APP C 2